

GERALDINE COLEMAN, PLAINTIFF AND APPELLEE, VS. HOTEL DE FRANCE COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 9185. January 25, 1915

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment rendered April 29, 1913, by the Honorable A. S. Crossfield in favor of the plaintiff, Geraldine Coleman, and against the defendant, the Hotel de France Company, for the sum of P585.42 as damages for the breach of a written contract made September 13, 1912, at Sydney, Australia, between plaintiff, a professional gymnast, and the defendant company, through its manager, Ignacio Arnalot, whereby the latter hired the former to entertain the patrons of its hotel at Manila for the period of three months at a salary of £12 per month, besides agreeing to furnish her board, lodging, and laundry expenses and also to pay her passage from Australia to Manila and return. The existence of the contract, the ability and readiness of the plaintiff to fulfill her part thereof, and the cancellation thereof by the defendant company are facts that are not controverted in this court.

The defenses here insisted on are:

- That the contract in question is void under the immigration laws in force in these Islands;
- That the contract in question is void in that it exceeded the corporate capacity of the defendant corporation—that is, is ultra vires;
- That if the contract were valid defendant company was justified in canceling it by reason of the violation of its terms by plaintiff; and
- That the court erred in the measure of damages awarded plaintiff in that plaintiff was at most entitled to the value of the services actually rendered by her to defendant company, and not to the full amount of the stipulated salary and expenses incurred by her by reason of the cancellation of the contract in question.

The contention of appellant based on the immigration laws of the United States in force in these Islands is manifestly untenable in view of the express provisions of section 2 of the United States Immigration Act of February 20, 1907, now in force in the Philippine Islands, which declares that:

"The provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants."

The evidence of record fully sustains the allegations of the complaint that plaintiff is a professional acrobat and that the contract in question was for her services as such, in the course of exhibitions to be given under the auspices and control of the defendant. It further appears that she has pursued the profession of "artistic gymnast" and "trapeze artist" for ten years, and that in the words of the principal witness for the defense she was "all right

for the work she was engaged to do."

We are of opinion and so hold, that the contract in question was not affected by the provisions of the statute, the right of plaintiff to enter the Philippine Islands, notwithstanding the fact that she did so under contract for her professional services, being clearly included within the exceptions of the general provisions of the law in favor of "professional actors."

The contentions of the defendant corporation based on its supposed lack of express or implied power under its articles of incorporation to enter into the contract are entitled to but scant consideration. As was said by Justice Brewer in the case of *Chicago, Rock Island & Pacific R. R. Co. vs. Union Pacific Ry. Co.* (47 Fed. Rep., 15, 22):

"It is not seemly for a corporation, any more than for an individual, to make a contract and then break it; to abide by it so long as it is advantageous, and repudiate it when it becomes onerous. The courts may well say to such corporation : 'As you have called it a contract, we will do the same. As you have enjoyed the benefits when it was beneficial, you must bear the burden when it becomes onerous, unless it clearly appears that that which you have assumed to do is beyond your powers.' In *Railway Co. vs. McCarthy* (96 U. S.; 267), the Supreme Court said:

" 'When a contract is not on its face necessarily beyond the scope of the power of the corporation by which it was made, it will, in the absence of proof to the contrary, be presumed to be valid. Corporations are presumed to contract within their powers. The doctrine of ultra vires, when invoked for or against a corporation, should not be allowed to prevail where it would defeat the ends of justice or work a legal wrong.'"

The evidence of record in this case falls far short of sustaining a finding that under the articles of incorporation of the defendant, by virtue of which it was engaged in the operation of hotels and week-end resorts in the city of Manila and its environs, it was beyond its implied powers to enter into and to execute a contract which had for its object the giving of vaudeville entertainments, including acrobatic exhibitions, at the hotels operated by it, for the purpose of entertaining its guests and attracting patronage. We incline rather to believe that the execution of a contract for the employment of vaudeville artists, bands, orchestras, and the like may fairly be held to be included within the powers incidental to the express powers for which the defendant corporation, engaged as it was in the conduct, management, and operation of hotels in and about the city of Manila, was created.

The contentions of the defendant corporation upon which it seeks to justify its violation of its contract with the plaintiff on the ground of her alleged misconduct, are sufficiently and satisfactorily disposed of in the opinion of the trial judge.

Holding as we do that the defendant corporation without just cause or excuse discharged the plaintiff in flagrant violation of its contract of employment with her, we agree with the trial judge that plaintiff is entitled to recover not merely compensation for services rendered before the breach of the contract by her employer, but the full amount which she might have earned under the contract less such compensation as she actually obtained or might have obtained in some other employment during the term of the contract which had not yet expired at the date of the breach, the burden of proof as to the amount by which the prima facie damage may thus be reduced being upon the defendant. (*Aldaz vs. Gay*, 7 Phil. Rep., 268.)

We find no error in the proceedings prejudicial to the rights of the appellant. The judgment entered in the court below should therefore be affirmed, with the costs of this instance against it. So ordered.

Arellano, C. J., Torres, Moreland, Trent, and Araullo, JJ., concur.

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